

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Chapter 11 Bankruptcy

Intrepid U.S.A., Inc.,  
and Jointly Administered Cases,

Case No. 04-40416-NCD

Case No. 04-40462-NCD

Case No. 04-40418-NCD

Debtors

Case Nos. 04-41924 – 04-41988-NCD

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**NOTICE OF HEARING AND MOTION FOR ORDER APPROVING  
SETTLEMENT AGREEMENT BETWEEN F.C. ACQUISITION CORPORATION,  
TBJG, LLC AND MEDSHARES, INC. A/K/A MERIDIAN CORPORATION**

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TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. F.C. Acquisition Corporation (“Debtor”), by its undersigned attorneys, moves the Court for the relief requested below and give notice of hearing herewith.

2. The Court will hold a hearing on this motion on August 18, 2004, at 2:30 p.m., or as soon thereafter as counsel can be heard, in Courtroom 7 West, U.S. Courthouse, 300 S. Fourth St., Minneapolis, Minnesota 55415.

3 A response to this motion must filed and delivered not later than August 13, 2004 which is three days before the time set for the hearing (excluding Saturdays, Sundays and Holidays), or served and filed by mail not later than August 9, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and Holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on January 29, 2004. The case is now pending in this Court.

5. This motion arises under Federal Rule of Bankruptcy Procedure 9019. This motion is filed under Federal Rules of Bankruptcy Procedure 2002 and 9014 and Local Rules 9006-1, 9013-1 to 9019-1. Debtor requests the Court to enter an Order approving a stipulation between Debtor and Meridian Corporation a/k/a Medshares, Inc. (“Medshares”) regarding settlement of litigation.

6. On June 30, 2003, TBJG, LLC (“TBJG”)<sup>1</sup> and Debtor, as the successful bidders pursuant to 11 U.S.C. §363 for the assets of Medshares, purchased substantially all of the Medshares assets utilized in or for the benefit of Medshares’ then operating locations, including, the Debtor and TBJG assert, the Disputed Premium Refunds (as defined below).

7. On December 3, 2003, Debtor and TBJG as plaintiffs filed Adversary Proceeding No. 03-01179 in the Medshares Chapter 11 bankruptcy proceeding in the Western District of Tennessee, Memphis Division (“Medshares Chapter 11”) against John R. Dunlap, individually and as attorney for the Medshares debtors (“Dunlap”), and Humphreys, Dunlap, Wellford, Acuff & Stanton, PC (“Humphreys, Dunlap”). Debtor and TBJG sought possession and ownership of certain sums of money received by John Dunlap and/or the Medshares debtors representing the return or refund of various unpaid premiums on several different insurance policies (the “Disputed Premium Refunds”) previously owned by Medshares.

8. On December 4, 2003, Medshares filed Adversary Proceeding No. 03-01183 in connection with the Medshares Chapter 11 against TBJG and the Debtor, asserting a declaratory judgment action against them for a determination of the proper ownership and entitlement to the

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<sup>1</sup> TBJG and the Debtor are related companies, but TBJG is not a debtor.

Disputed Premium Refunds being held at that time by Mr. Dunlap on behalf of the Medshares debtors.

9. As a result of the two filed adversary proceedings which asserted each party's alleged rights to the Disputed Premium Refunds in question, all of the parties entered into and filed an "Agreed Stipulation and Consent Order Regarding Deposit of Refund Proceeds into the Registry of the Bankruptcy Court Pending Resolution of Disputes" (the "Agreed Stipulation") and the stipulation was entered on January 8, 2004.

10. Simultaneously with the entry of the Agreed Stipulation, John Dunlap and Humphreys, Dunlap, upon tendering the funds described into the Court Registry, were immediately dismissed with prejudice as defendants in the adversary proceeding, leaving for a decision only Adversary Proceeding No. 03-01183, the declaratory judgment action initiated by Medshares against TBJG and the Debtor.

11. Since the entry of the Agreed Stipulation, all additional insurance premium refund proceeds received by any party and/or affiliate or agent have been deposited into the Registry of the Bankruptcy Court for the Western District of Tennessee. Currently, the approximate sum of \$683,000 is on deposit and the Debtor and TBJG on one hand, and Medshares on the other, have previously and still assert conflicting claims as to the ownership of such proceeds.

12. The parties have now settled their dispute regarding the Disputed Premium Refunds as follows.

(a) Upon approval of the Settlement Agreement (as defined below) by this Court and the United States Bankruptcy Court for the Western District of Tennessee, Memphis Division, the parties agree that the sum of \$500,000 will be paid over by check

to the Debtor, with the remainder of the Disputed Premium Refunds to be paid to the Medshares bankruptcy estate.

(b) Medshares shall solely be entitled to receive any proceeds from the sale of furniture and furnishings, previously located and remaining in the old Medshares office building in Memphis, Tennessee, which furnishings were abandoned to the Medshares bankruptcy estate subsequent to the asset purchase by TBJG and the Debtor on June 30, 2003.

(c) If, as, and when any party to the Settlement Agreement, or any subsidiary, affiliate or attorney of any such party receives additional Disputed Premium Refunds in the future, and after the date of final entry of the orders approving this Agreement, such additional Disputed Premium Refunds proceeds will be divided seventy-five percent (75%) for the Debtor and twenty-five percent (25%) for Medshares.

(d) With respect to the current claims of the State of Texas and Marsh U.S.A. in connection with any of the Disputed Premium Refunds, Medshares will assume the full legal and operational responsibility for accounting, collection, defense and/or disposition of any such funds, including defending any rights of setoff or recoupment asserted either by the State of Texas or Marsh U.S.A. Except for their right to share in the funds as set forth above, TBJG and the Debtor agree not to assert any ownership therein or assume any obligation to defend any claim against any proceeds associated therewith, and Medshares agrees that it will solely be responsible for resolving these specific claims.

(e) Medshares agrees, warrants and represents that the NCFE superpriority claim asserted in the Medshares bankruptcy estate, initially owned by NCFE, which claim is now owned by TBJG and/or the Debtor, will be allowed in an amount not less

than \$17,000,000. Additionally, the Medshares debtors acknowledge that the NCFE claim owned by the Debtor and/or TBJG was entitled to be used in the amount of \$17,000,000 as a credit bid in connection with the purchase of the Medshares assets by TBJG and the Debtor on June 30, 2003 and that such credit bid was appropriate and valid, and Medshares further waives any right to object to such bid or its validity up to and including \$17,000,000. Neither the Debtor nor TBJG will assert such superpriority claim against the Medshares portion of the Disputed Premium Refunds or the proceeds of the sale of any assets contemplated above in paragraph 12(b).

(f) The Debtor and TBJG, for themselves and their partners or members, representatives, attorneys, administrators, beneficiaries, successors and assigns, and any and all of their parents, subsidiaries and affiliated entities (including all other Intrepid Parties), release and forever discharge the Medshares debtors, and any of their parents, subsidiaries, affiliates, partners, and each of them, together with their respective directors, officers, agents, attorneys, representatives, successors and assigns, from and against any and all claims, actions, causes of action, suits, promises, damages or attorneys' fees of any nature whatsoever, whether in law or in equity, whether known or unknown, liquidated or unliquidated in any way related to or connected to, or arising out of the terms of the Settlement Agreement and the ownership, entitlement and/or possession of the Disputed Premium Refunds provided, however, that expressly excluded from this release are (i) any and all claims by TBJG and the Debtor to enforce any of their rights under the Settlement Agreement; and (ii) all obligations of the Medshares debtors under the Settlement Agreement.

(g) The Medshares debtors, for themselves and their partners, representatives, attorneys, administrators, beneficiaries, successors and assigns, and any and all of their parents, subsidiaries and affiliated entities, release and forever discharge TBJG and the Debtor, and any of their parents, subsidiaries, affiliates, partners, and each of them, together with their respective directors, officers, agents, attorneys, representatives, successors and assigns, from and against any and all claims, actions, causes of action, suits, promises, damages or attorneys' fees of any nature whatsoever, whether in law or in equity, whether known or unknown, liquidated or unliquidated in any way related to or connected to, or arising out of the terms of the Settlement Agreement and the ownership, entitlement and/or possession of the Disputed Premium Refunds; provided, however, that expressly excluded from this release are (i) any and all claims by the Medshares debtors to enforce any of their rights under the Settlement Agreement; and (ii) all obligations of the Debtor and TBJG under the Settlement Agreement.

13. A true and correct copy of the Settlement Agreement and Release is attached hereto as Exhibit A (the "Settlement Agreement") and more fully describes the agreements between the parties. Pursuant to Bankruptcy Rule 9019, the Debtor seeks court approval to enter into the Settlement Agreement. The Debtor, exercising its business judgment, believes that the settlement as proposed in the Settlement Agreement is in the best interests of the estate because it fully resolves a number of outstanding issues relating to the Medshares acquisition without an additional expenditure of funds or assets by the Debtor and will result in the estate receiving \$500,000 without the need for further litigation.

14. Pursuant to Local Rule 9013-2(a), this motion is verified and is accompanied by a memorandum of law, a proposed order, and proof of service.

15. Pursuant to Local Rule 9013-2(c), Debtor gives notice that it may, if necessary, call Dennis I. Simon, CEO or Gregory Von Arx, CFO of the Debtors whose business addresses are 6600 France Ave. S., Edina MN 55425 to testify.

WHEREFORE, Debtor, by its undersigned attorneys, respectfully requests that the Court enter an order approving the Stipulation and for such other relief as may be just and equitable.

Dated: July 30, 2004

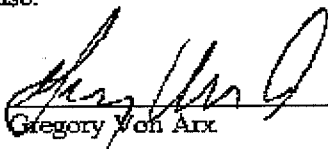
/s/ Heather B. Thayer  
Clinton E. Cutler (#158094)  
Heather B. Thayer (#222459)  
Ryan t. Murphy (#311972)  
**FREDRIKSON & BYRON, P.A.**  
4000 Pillsbury Center  
200 South Sixth St.  
Minneapolis, MN 55402  
Telephone 612-492-7000  
Facsimile: 6120-492-7077

**ATTORNEYS FOR DEBTOR**

**VERIFICATION**

I, Gregory Von Arx, Chief Financial Officer for Debtors named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief and that Exhibit A is a true and correct copy of the Settlement Agreement and Release.

Dated: July 30, 2004

  
\_\_\_\_\_  
Gregory Von Arx

#2996003/2



## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (this “Settlement Agreement”), entered into as of the 30th day of July, 2004, is by and between MERIDIAN CORPORATION, a/k/a MEDSHARES, INC. (“Medshares”), on the one hand, and F.C. ACQUISITION CORPORATION (“FC Acquisition”) d/b/a INTREPID USA HEALTHCARE SERVICES and TBJG LLC (“TBJG”) (TBJG and FC Acquisition collectively are sometimes referred to as the “Intrepid Parties”), on the other.

**WHEREAS**, on December 3, 2003, FC Acquisition and TBJG as plaintiffs filed Adversary Proceeding No. 03-01179 against John R. Dunlap, individually and as attorney for the Medshares debtors (“Dunlap”), and Humphreys, Dunlap, Wellford, Acuff & Stanton, PC (“Humphreys, Dunlap”) wherein FC Acquisition and TBJG sought possession and ownership of certain sums of money received by John Dunlap and/or the Medshares debtors representing the return or refund of various unpaid premiums on several different insurance policies (the “Disputed Premium Refunds”) previously owned by Medshares in its Chapter 11 bankruptcy proceeding in the Western District of Tennessee, Memphis Division;

**WHEREAS**, on December 4, 2003, Meridian Corporation a/k/a Medshares, Inc. filed its Adversary Proceeding No. 03-01183 against TBJG and FC Acquisition, asserting therein a declaratory judgment action against those defendants for a determination by this Court of the proper ownership and entitlement to the same Disputed Premium Refunds being held at that time by Mr. Dunlap on behalf of the Medshares debtors;

**WHEREAS**, as a result of the two adversary proceedings referred to above being filed, basically asserting each party’s alleged rights in the Disputed Premium Refunds in question, all of the parties entered into and filed with the Court that one certain “Agreed Stipulation and

## **EXHIBIT A**

Consent Order Regarding Deposit of Refund Proceeds into the Registry of the Bankruptcy Court Pending Resolution of Disputes” (the “Agreed Stipulation”) which stipulation was entered on January 8, 2004;

**WHEREAS**, simultaneously with the entry of the Agreed Stipulation, John Dunlap and Humphreys, Dunlap, upon tendering the funds described into the Court Registry, were immediately dismissed with prejudice as defendants in the adversary proceeding, leaving for a decision only Adversary Proceeding No. 03-01183, the declaratory judgment action initiated by Medshares against TBJG and FC Acquisition;

**WHEREAS**, since the entry of the Agreed Stipulation, all additional insurance premium refund proceeds received by any party and/or affiliate or agent thereof have been deposited into the Registry of the Bankruptcy Court so that presently there is on deposit the approximate sum of \$683,000, to which the Intrepid Parties and Medshares have previously and still assert conflicting claims as to ownership of said proceeds;

**WHEREAS**, on June 30, 2003, TBJG and FC Acquisition, as the successful bidders pursuant to 11 U.S.C. § 363, for the assets of Medshares, effectuated with Medshares the initial closing of the Asset Purchase Agreement and thereby became owners of what they believe to be all Medshares assets, including the Disputed Premium Refunds described in this Agreement;

**WHEREAS**, on January 29, 2004 and April 12, 2004, it became necessary for FC Acquisition and many of its various affiliates (including Intrepid U.S.A., Inc.) and subsidiaries, with the exception of TBJG, to file their own Chapter 11 proceeding in the United States Bankruptcy Court for the District of Minnesota, in Minneapolis, where the Intrepid Parties remain as debtors-in-possession, and the Intrepid Parties and the Medshares debtors agree that

each party will need to seek approval of this Settlement Agreement in their respective bankruptcy estates pursuant to Fed. R. Bank. P. 9019;

**WHEREAS**, the parties hereto acknowledge and represent that they have reached agreement on the ownership and division of the Disputed Premium Refunds, and desire to avoid further uncertainty and expense related to the adversary proceeding litigation currently on file, and wish to resolve all matters and issues between them related to the Disputed Premium Refunds pursuant to this Agreement;

**WHEREAS**, the parties hereto acknowledge that they will derive substantial benefit from this Settlement Agreement and that they are receiving fair consideration and reasonably equivalent value for the exchanges and releases herein; and

**NOW THEREFORE**, in consideration of the promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed by and among the parties to this Settlement Agreement as follows:

1. Division of Proceeds Held in Registry of the Court. Upon approval of this Settlement Agreement by this Court and the United States Bankruptcy Court for the District of Minnesota, the parties agree that the sum of \$500,000 will be paid over by check to F.C. Acquisition , with the remainder of the funds presently held on deposit at the National Bank of Commerce in Memphis, Tennessee, to be paid to the Medshares bankruptcy estate. In connection with the original deposit of the Disputed Premium Refunds, this Court entered its “Administrative Order on Deposit of Funds” reflecting the initial deposit of \$345,632.86. Upon the attaining of final court approval of this Settlement Agreement and any other administrative approvals necessary, the \$500,000 settlement amount to be paid to F.C. Acquisition shall be made by bank check or

certified funds check made payable to F.C. Acquisition and delivered to the attention of the following:

Clinton Cutler  
Fredrikson & Byron, P.A.  
4000 Pillsbury Center  
200 South Sixth Street  
Minneapolis MN 55402

2. Disposition of Medshares Furniture. In connection with the purchase of the Medshares assets by TBJG and FC Acquisition, on June 30, 2003, and in furtherance of this settlement, it is agreed between the parties that Medshares, to the exclusion of any Intrepid Parties or entities, shall solely be entitled to realize and receive any proceeds from the sale of furniture and furnishings, previously located and remaining in the old Medshares office building in Memphis, Tennessee, which furnishings were abandoned to the Medshares bankruptcy estate subsequent to the asset purchase by TBJG and FC Acquisition on June 30, 2003. To the extent required and not previously agreed, the Intrepid Parties hereby assert and reconfirm their intention to abandon any and all such furniture and furnishings located in the old Medshares office building to and for the benefit of the Medshares debtors, who would be authorized to seek, in their discretion, an auction or other sale of this furniture and furnishings and would thereafter be entitled to retain all such proceeds from such auction upon receipt. To the extent counsel for the Medshares Debtors incurs any attorneys' fees and costs in connection with such auction or sale, and as may be appropriate pursuant to this Court's rulings, such fees and costs incurred in connection with the disposition of such furniture may be allocated to those proceeds. The parties agree that the Medshares Debtors may seek approval from the Memphis Bankruptcy Court for the disposition of the such furniture and furnishing prior to approval of this Settlement by the respective bankruptcy courts.

3. Establishment of Fund for Medical Claims. The Intrepid Parties acknowledge that upon division and payment in settlement of the proceeds from the Disputed Premium Refunds as agreed and provided for herein, the Medshares debtors may seek to establish a separate fund of up to \$30,000 out of the Medshares portion of such proceeds, to be utilized as required to pay for certain previously unfunded medical claims of Medshares employees according to such requirements and procedures as the Medshares debtors and their counsel may establish with the Medshares' Court's approval. The Intrepid Parties acknowledge that the establishment of this separate fund is totally in the discretion of Medshares, and such fund is to be established only out of the share of the Disputed Premium Refunds going to Medshares, and will not in any way be deducted from that portion of those proceeds being allocated to the Intrepid Parties.

4. Future Disputed Premium Refund Amounts. All the parties hereto agree that if, as and when any party to this Agreement, or any subsidiary, affiliate or attorney of either the Intrepid Parties or Medshares, should be in receipt of additional Disputed Premium Refunds in the future, and after the date of final entry of the order approving this Agreement, such additional Disputed Premium Refund proceeds will be divided seventy-five percent (75%) for the Intrepid Parties (made payable to F.C. Acquisition) and twenty-five percent (25%) for Medshares. All parties to this Agreement acknowledge and represent that they will fully disclose the receipt of any such refunds, and fully cooperate with the other parties to effectuate the intention of this Agreement and the collection and distribution of any such funds as they may be received. It is further agreed that with respect to the current claims of the State of Texas and Marsh U.S.A. in connection with any of the Disputed Premium Refunds, Medshares will assume the full legal and operational responsibility for accounting, collection, defense and/or disposition of any such funds, including defending any rights of setoff or recoupment to be asserted either by the State of

Texas or Marsh U.S.A. Except for their right to share in the funds as set forth above, the Intrepid Parties hereby acquiesce and agree not to assert any ownership therein or assume any obligation to defend any claim against any proceeds associated therewith, and the Medshares debtors agree that it will solely be responsible for resolving these specific claims.

5. Medshares Acknowledgement of NCFE Superpriority Claim. In connection with the Settlement Agreement and the considerations stated herein, Medshares agrees, warrants and represents that the NCFE superpriority claim asserted in the Medshares bankruptcy estate, initially by NCFE, and which claim is now owned by TBJG and/or FC Acquisition, will be allowed in an amount not less than \$17,000,000. Additionally, the Medshares debtors acknowledge that the NCFE claim owned by FC Acquisition and/or TBJG was entitled to be utilized in the amount of \$17,000,000 as a credit bid in connection with the purchase of the Medshares assets by TBJG and FC Acquisition on June 30, 2003 and that such credit bid was appropriate and valid, and Medshares further waives any right to object to such bid or its validity up to the amount specified in connection with this Settlement Agreement. Notwithstanding any provision contained in this Settlement Agreement or in any other agreement or order, none of the Intrepid Parties shall assert said superpriority claim against the Medshares portion of the Disputed Premium Refunds or the proceeds of the sale of any assets contemplated in section 2 above.

6. Bankruptcy Court Approval Required. Both Medshares and the Intrepid Parties agree that they will promptly seek approval of this Settlement Agreement in their respective bankruptcy estates and that both bankruptcy courts will need to approve and authorize the actions described in and the provisions of this Settlement Agreement before any distribution of the proceeds as specified in Paragraph 1 above.

7. Release of Medshares. F.C. Acquisition and TBJG, for themselves and their partners, representatives, attorneys, administrators, beneficiaries, successors and assigns, and any and all of their parents, subsidiaries and affiliated entities (including all other Intrepid Parties), do hereby release and forever discharge the Medshares debtors, and any of their parents, subsidiaries, affiliates, partners, and each of them, together with their respective directors, officers, agents, attorneys, representatives, successors and assigns, from and against any and all claims, actions, causes of action, suits, promises, damages or attorneys' fees of any nature whatsoever, whether in law or in equity, whether known or unknown, liquidated or unliquidated in any way related to or connected to, or arising out of the terms of this Settlement Agreement and the ownership, entitlement and/or possession of the Disputed Premium Refunds specified herein; provided, however, that expressly excluded from this release are (a) any and all claims by the Intrepid Parties to enforce any of their rights under this Settlement Agreement; and (b) all obligations of the Medshares debtors under this Settlement Agreement.

8. Release of the Intrepid Parties. The Medshares debtors, for themselves and their partners, representatives, attorneys, administrators, beneficiaries, successors and assigns, and any and all of their parents, subsidiaries and affiliated entities, do hereby release and forever discharge the Intrepid Parties, and any of their parents, subsidiaries, affiliates, partners, and each of them, together with their respective directors, officers, agents, attorneys, representatives, successors and assigns, from and against any and all claims, actions, causes of action, suits, promises, damages or attorneys' fees of any nature whatsoever, whether in law or in equity, whether known or unknown, liquidated or unliquidated in any way related to or connected to, or arising out of the terms of this Settlement Agreement and the ownership, entitlement and/or possession of the insurance refund proceeds specified herein; provided, however, that expressly

excluded from this release are (a) any and all claims by the Medshares debtors to enforce any of their rights under this Settlement Agreement; and (b) all obligations of the Intrepid Parties under this Settlement Agreement.

9. No Prior Representation. All prior discussions, understandings, representations, conditions, warranties, covenants, negotiation, agreements and all other communications between or among the parties pertaining to the subject matter of this Settlement Agreement are hereby superseded and merged herein. The parties represent and acknowledge that in executing this Settlement Agreement they do not rely and have not relied upon any representation or statement not set forth herein with regard to the subject matter, basis or effect of this Settlement Agreement or otherwise.

10. Entire Agreement. This Settlement Agreement, including the recitals, represents the entire agreement of the parties with respect to the subject matter hereof. This Settlement Agreement may not be modified, changed, amended, supplemented or rescinded except pursuant to a written instrument duly executed by all of the parties. Each party acknowledges and agrees that it shall not make any claim, at any time, that this Settlement Agreement has been orally altered or modified in any respect whatsoever.

11. Severability. The provisions of this Settlement Agreement are severable, and if any provision of this Agreement is found to be invalid or unenforceable, then such provision shall be deemed to be deleted to the extent that it is found to be invalid or unenforceable. Such an invalid or unenforceable provision shall not affect the validity of the remainder of this Settlement Agreement, and the remaining provisions shall continue in full force and effect.



12. No Party Deemed Drafter. The parties shall jointly be deemed to be the drafters of this Settlement Agreement and the rule that any ambiguity in a document shall be construed against the party drafting the document shall not apply to this Settlement Agreement.

13. Headings. The paragraph headings in this Settlement Agreement are included for convenience only, and do not in any way define, limit, alter, affect or control the matters contained in this Settlement Agreement, or the paragraphs that they encaption.

14. No Waiver. No waiver or indulgence of any breach or series of breaches of this Settlement Agreement shall be deemed a waiver of any other breach of this Settlement Agreement or any of its provisions or affect the enforceability of the remainder of this Settlement Agreement.

15. Notice. Notice by a party to any other party shall be delivered in writing and shall be deemed to have been duly given if delivered personally, delivered by courier, sent by facsimile transmission during normal business hours to the facsimile transmission numbers set forth below, or sent by mail in a registered or certified postage prepaid envelope, return receipt requested, addressed as follows:

To Medshares:

c/o John Dunlap  
Farris Mathews Branan Bobango Hellen & Dunlap  
40 South Main, Suite 2000  
Memphis, Tennessee 38103  
Facsimile No. (901) 259-7150

To the Intrepid Parties:

c/o Michael P. Massad, Jr.  
Hunton & Williams LLP  
1601 Bryan Street, 30<sup>th</sup> Floor  
Dallas, Texas 75201  
Facsimile No. (214) 880-0011  
And

Clinton E. Cutler  
Fredrikson & Byron, P.A.  
4000 Pillsbury Center  
200 South Sixth Street  
Minneapolis MN 55402  
Facsimile No. 612-492-7077

or to such other address for notice of which the parties have advised or may advise each other in writing in accordance with the provisions of this paragraph. Notice shall be deemed to have been delivered only upon actual delivery to the foregoing addresses (by hand delivery, courier or facsimile transmission with written confirmation of receipt), or two (2) business days after deposit in the United States mail, postage prepaid, addressed to the foregoing addresses.

16. Choice of Law. This Settlement Agreement shall be governed by, subject to, and construed in accordance with the laws of the State of Tennessee without regard to its internal conflicts of law principles.

17. Counterparts. This Settlement Agreement may be executed in two or more counterparts and/or by facsimile, each of which shall be deemed an original and any set of which, when taken together, shall constitute one and the same instrument and be sufficient proof of the instrument so constituted. Notwithstanding the foregoing, if a signature page is transmitted by facsimile, the party so transmitting shall deliver the original signature page to the other parties as soon as reasonably possible after facsimile transmission.

18. Benefit of Successors. This Settlement Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors, partners, members, assigns, divisions, parents, affiliates and subsidiaries.

19. Authority to Execute. Each person signing this Settlement Agreement represents and warrants that he/she has read and understands the terms of the Settlement Agreement and that

he/she has full power and authority to execute this Settlement Agreement on behalf of the real party in interest for which he/she is signing and to bind that real party in interest legally to the terms of this Settlement Agreement; provided, however, that the parties acknowledge that the enforceability of this Settlement Agreement is subject to the entry of the Approval Order.

**THE PARTIES FURTHER STATE THAT THEY HAVE CAREFULLY READ THIS SETTLEMENT AGREEMENT, WHICH INCLUDES A RELEASE BY THEM OF CLAIMS, THAT THEY HAVE HAD SUFFICIENT TIME TO REVIEW THE SETTLEMENT AGREEMENT AND CONSULT WITH SUCH ADVISORS AS THEY DEEM APPROPRIATE, THAT THEY FULLY UNDERSTAND THE FINAL AND BINDING EFFECT OF THE SETTLEMENT AGREEMENT, THAT THE ONLY PROMISES MADE ARE THOSE STATED HEREIN AND THAT THEY ARE SIGNING THIS AGREEMENT KNOWINGLY AND VOLUNTARILY AND WITH THE FULL INTENT OF RELEASING CERTAIN OF THE OTHER PARTIES IN THE MANNER DESCRIBED HEREIN.**

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of the date written above.

**MERIDIAN CORPORATION a/k/a  
MEDSHARES, INC.**

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Its: \_\_\_\_\_

**F.C. ACQUISITION CORPORATION**

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Its: \_\_\_\_\_

**TBJG LLC**

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Its: \_\_\_\_\_

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Chapter 11 Bankruptcy

Intrepid U.S.A., Inc.,  
and Jointly Administered Cases,

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Case No. 04-40462-NCD

Case No. 04-40418-NCD

Debtors

Case Nos. 04-41924 – 04-41988-NCD

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**MEMORANDUM IN SUPPORT OF MOTION FOR ORDER APPROVING  
SETTLEMENT AGREEMENT BETWEEN F.C. ACQUISITION CORPORATION,  
TBJG, LLC AND MEDSHARES, INC. A/K/A MERIDIAN CORPORATION**

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F.C. Acquisition Corporation (“Debtor”), by its undersigned attorneys, submits this Memorandum in Support of its Motion for Order Approving Settlement Agreement.

**FACTS**

The factual support for this memorandum is set forth in the verified Motion. Capitalized terms used herein shall have the meanings ascribed to them in the Motion.

**ARGUMENT**

**THE COURT SHOULD APPROVE THE STIPULATION.**

Rule 9019 of the Federal Rules of Bankruptcy Procedure provides that:

On motion by the trustee and after a hearing on notice to creditors, the United States Trustee, the debtor and indenture trustees as provided in Rule 2002 and to such other entities as the court may designate, the court may approve a compromise or settlement.

Fed. R. Bankr. P. 9019(a).

“Rule 9019 of the Federal Rules of Bankruptcy Procedure vests the bankruptcy court with broad authority to approve or disapprove all compromises and settlements affecting the

bankruptcy estate.” In re Bates, 211 B.R. 338, 343 (Bankr. D. Minn. 1997). In determining whether a proposed settlement should be approved, the court should consider the following:

- (1) The probability of success on the merits in the litigation;
- (2) The difficulties, if any, to be encountered in collection of any judgment that might be obtained;
- (3) The complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it;
- (4) The paramount interests of creditors and the proper deference to their reasonable views in the premises; and
- (5) Whether the conclusion of the litigation promotes the integrity of the judicial system.

Id. (citations omitted).

The Debtor, exercising its business judgment, believes that the settlement as proposed in the Settlement Agreement is in the best interests of the estate because it fully resolves a number of outstanding issues relating to the Medshares acquisition without an additional expenditure of funds or assets by the Debtor and will result in the estate receiving \$500,000 without the need for further litigation. Therefore, the Settlement Agreement should be approved.

### **CONCLUSION**

Debtor respectfully requests that the Court grant the Motion and enter an Order Approving the Settlement Agreement.

Dated: July 30, 2004

/s/ Heather B. Thayer  
Clinton E. Cutler (#158094)  
Heather B. Thayer (#222459)  
Ryan T. Murphy (#311972)  
**FREDRIKSON & BYRON, P.A.**  
4000 Pillsbury Center  
200 South Sixth St.  
Minneapolis, MN 55402  
Telephone 612-492-7000

**ATTORNEYS FOR DEBTOR**

#2996051/2

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Intrepid U.S.A., Inc.,  
and Jointly Administered Cases,

Debtor

Chapter 11 Bankruptcy

Case No. 04-40416-NCD

Case No. 04-40462-NCD

Case No. 04-40418-NCD

Case Nos. 04-41924 - 04-41988

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**CERTIFICATE OF SERVICE**

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Heather B. Thayer, under penalty of perjury, states that on August 4, 2004 she caused to be served the following:

1. Notice of Hearing and Motion to Approve First Amendment to Post-Petition Revolving Credit and Security Agreement;
2. Memorandum of Law in Support of Motion to Approve First Amendment to Post-Petition Revolving Credit and Security Agreement;
3. Order Approving First Amendment to Post-Petition Revolving Credit and Security Agreement;
4. Notice of Hearing and Motion for Order Approving Settlement Agreement between F.C. Acquisition Corporation, TBJG, LLC and Medshares Inc. a/k/a Meridian Corporation;
5. Memorandum in Support of Motion for Order Approving Settlement Agreement between F.C. Acquisition Corporation, TBJG, LLC and Medshares Inc. a/k/a Meridian Corporation;
6. Order Approving Settlement Agreement between F.C. Acquisition Corporation, TBJG, LLC and Medshares Inc. a/k/a Meridian Corporation; and
7. Certificate of Service.

by sending true and correct copies via United States Mail to all parties on the attached service list.

Dated: August 4, 2004

/e/Heather B. Thayer  
Heather B. Thayer

#2998389

## Service List: Intrepid II

Dennis Simon  
Intrepid U.S.A., Inc.  
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Michael Masad/Steven Holmes  
Hunton & Williams  
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Robert B. Raschke Esq  
U.S. Trustee's Office  
1015 US Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Roylene A. Champeaux  
D. Gerald Wilhelm  
Assistant US Attorney  
600 US Courthouse  
300 South Fourth Street  
Minneapolis MN 55415

MN Department of Revenue  
Collection Enforcement  
551 Bankruptcy Section  
P.O. Box 64447  
St. Paul, MN 55164

Internal Revenue Service  
Special Procedures Branch  
Stop 5700  
316 North Robert Street  
St. Paul, MN 55101

Blaine Holliday  
IRS Office of Chief Counsel  
650 Galtier Plaza  
380 Jackson Street  
St. Paul, MN 55101

Securities & Exchange Comm.  
Bankruptcy Section  
175 W Jackson Blvd.  
Suite 900  
Chicago IL 60604

DVI Financial Services, Inc.  
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Maslon Edelman et al.  
3300 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402

DVI Business Credit Corp.  
Richard M. Beck, Esq.  
Klehr, Harrison, Harvey et al.  
260 South Broad Street  
Philadelphia PA 19102-3163

Todd J. Garamella  
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Robins, Kaplan  
2800 LaSalle Plaza  
800 LaSalle Avenue  
Minneapolis, MN 55402-2015

### Attorneys for Creditors Committee

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### Requests for Notice

IRS/Special Procedures Branch  
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Greg Bongiovanni  
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Bankruptcy Administration  
IOS Capital, LLC  
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Macon GA 31208-3708

U.S. Bank N.A.  
c/o Michael R. Stewart  
Faegre & Benson, LLP  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402-3901

Lang-Nelson Associates  
c/o William I. Kampf  
220 South Sixth Street, #1800  
Minneapolis, MN 55402

### Additional names for Intrepid II list

Keybank N.A.  
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Cleveland OH 44114

Garamella Family Ltd. Ptnsp  
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Hopkins MN 55343

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c/o Matthew R. Burton  
Leonard O'Brien et al.  
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Minneapolis MN 55402-1216

Bank One  
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Alexandria LA 71301

Mpls Comm Dev Agency  
105 – 5<sup>th</sup> Ave S  
Minneapolis MN 55401

Affordable Housing Project  
c/o Fed Home Loan Bank  
907 Walnut St  
Des Moines IA 50309

MHFA  
ATTN: William Kuretsky  
400 Sibley St, Suite 300  
St Paul MN 55101



Neil Herskowitz  
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CapitalSource Finance LLC  
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c/o Alan Horowitz  
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c/o H. Flynn Griffin, III  
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Bexar County  
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Linebarger Goggan Blair & Sampson  
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San Antonio, TX 78205

G-Fore Associates LLC  
c/o Bradford A. Steiner  
Jason S. Kelley  
Steiner Norris PLLC  
2320 Second Ave., Suite 2000  
Seattle, WA 98121

Les Nelson Investments  
c/o Mark E. Fosse  
Dunlap & Seeger, P.A.  
206 South Broadway, Suite 505  
PO Box 549  
Rochester, MN 55903

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Munsch Hardt Kopf & Harr  
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*Guardian Home Care*  
c/o Larry B. Ricke  
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Minneapolis MN 55402

*Woodmen Office Land Associates*  
Huntington C. Brown  
US Bank Tower  
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TN Dept. Labor and Workforce  
Development—Unemployment Ins.  
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UNITED STATES BANKRUPTCY COURT  
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In re:

Chapter 11 Bankruptcy

Intrepid U.S.A., Inc.,  
and Jointly Administered Cases,

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Debtors

Case Nos. 04-41924 – 04-41988-NCD

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**ORDER APPROVING SETTLEMENT AGREEMENT BETWEEN  
F.C. ACQUISITION CORPORATION, TBJG, LLC  
AND MEDSHARES, INC. A/K/A MERIDIAN CORPORATION**

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The Debtor's Motion for entry of an order approving Settlement Agreement between F.C. Acquisition Corporation, TBJG, LLC and Medshares, Inc. a/k/a Meridian Corporation (the "Settlement Agreement") came on for hearing before the undersigned on August 18, 2004. Appearances, if any, are noted on the record.

Based upon the arguments of counsel, all the files, records and proceedings herein, the Court being fully advised in the premises, and the Court's Findings of Facts and Conclusions of Law, if any, having been stated orally and recorded in open court following the close of evidence:

IT IS HEREBY ORDERED:

Debtor's Motion for an Order Approving the Settlement Agreement is granted and the Settlement Agreement is approved.

Dated: \_\_\_\_\_, 2004

\_\_\_\_\_  
United States Bankruptcy Court Judge